



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 20, 1996

Mr. David Duncan
Senior Attorney
Legal Division
Texas Natural Resource Conservation Commission
P. O. Box 13087
Austin, Texas 78711-3087

OR96-1504

Dear Mr. Duncan:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 100187.

The Texas Natural Resource Conservation Commission (the "commission") received a request for the time frame, budget and the list of firms requesting information regarding a particular request for proposals. You submitted to this office for review the responsive documents and assert that the information is excepted from disclosure under section 552.104 of the Government Code.¹ We have considered the exception you claim and have reviewed the documents at issue.

Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." This exception is most commonly applied to protect information submitted to a governmental body in response to a competitive bidding notice or request for proposals. *See* Open Records Decision No. 592 (1991). It may also protect from disclosure information related to the bidding process that is not part of a bid. *See* Attorney General Opinion MW-591 (1982). The purpose of the exception is to prevent one bidder from gaining an unfair advantage over others. *See* Open Records Decision No. 541 (1990). Generally, section 552.104 does not

¹Since you have not raised an exception to the first item of the requestor's request for information, we assume that you will be responding to the requestor on this matter.

except bids from public disclosure after bidding is completed and the contract has been awarded.² *See id.*

You inform us that the information sought should be withheld because its release "would provide a competitive advantage to bidders." You contend that the release of the requested budget information would result in "an anticompetitive effect ... as it is likely that all of the bids would come in at or near the 'budget' figure." We have reviewed the documents at issue and conclude that the release of the budget information would be advantageous to the requestor. Accordingly, we conclude that the commission may withhold the requested budget information from required public disclosure based on section 552.104 of the Government Code.³

As for the list of potential bidders, you state that release of the information would adversely affect the interests of the commission. However, this office has held that "the identities of persons who receive[] bid packets ... is subject to disclosure under the Open Records Act." Open Records Decision Nos. 453 (1986), 46 (1974) (list of potential bidders could not be withheld because release of such information would not give advantage to other competitors or bidders). Therefore, you may not withhold the list of potential bidders pursuant to section 552.104, and this information must be released.⁴

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad", written over a large, loopy flourish that starts under the word "Yours" and extends to the right.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

²It is our understanding based on the information provided by the commission, that a contract has not yet been awarded.

³Section 552.104 does not except this information after the contract is awarded. *See* Open Records Decision No. 514 (1988).

⁴We note that some of the information submitted to this office does not appear responsive to the request. The requestor is not seeking copies of the actual requests made by the firms asking for bid packets regarding the particular proposal.

Ref.: ID# 100187

Enclosures: Submitted documents

cc: Mr. Julio C. Massad
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(w/o enclosures)